

BEFORE THE
Federal Communications Commission

WASHINGTON, D. C. 20554

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In the Matter of)

Rulemaking To Amend Part 1)
and Part 21 of the Commission's)
Rules to Redesignate the 27.5-)
29.5 GHz Frequency Band and to)
Establish Rules and Policies for)
Local Multipoint Distribution Service)

FEDERAL COMMUNICATIONS COMMISSION
OFFICE OF THE SECRETARY

CC Docket No. 92-297

To: The Commission

COMMENTS OF
TOTAL TV, INC.

Total TV, Inc. ("Total TV") hereby submits its comments in response to the Notice of Proposed Rulemaking in the captioned proceeding, released January 8, 1993. Total TV is active as a cable and private cable operator in the States of Wisconsin and California. The firm also holds electronics systems, engineering and manufacturing-related interests. As one of the original applicants for 28 GHz spectrum, Total TV has monitored developments in the LMDS arena very carefully over the last two years and believes this new industry holds tremendous promise. With the recommendations offered below, we endorse the Commission's adoption of the proposed LMDS rules.

I. Technical Issues

In the NPRM, the FCC recognized the virtue of a flexible structure for technical standards for deployment of 28 GHz systems, in light of the variety of distinct services which are envisaged for operation in this spectrum. NPRM at Para. 23-24. Total TV endorses the Commission's view that "only limited

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technical regulations may be needed to insure adequate interference control and coordination of services at the interfaces of the designated service areas." Id.

However, the text of the proposed rule on this point, Section 21.1012-Spectrum Utilization, does not reflect the technical flexibility recommended in the NPRM itself. Proposed Section 21.1012 would require that applications "contain detailed descriptions of the cellular configuration..., the modulation method," and other technical parameters. Total TV believes it is far too early in the development of the LMDS service, given significant strides expected in the next twelve to twenty-four months, to require that a 28 GHz licensee's polarization and modulation schemes be cast in stone in its application. Total TV anticipates the advent of digital capability in very short order so that an applicant's commitment to a modulation scheme at this juncture would be ill advised. Moreover, once the digital mode is available, the 20 MHz spacing contemplated by the proposed rules would be unnecessary. Thus, the rules should require a *minimum* of 49 broadcast channels with a *maximum* bandwidth of 20 MHz per channel.

In order to give the LMDS industry the opportunity to evolve in harmony with very rapid developments in digital technology, Total TV urges that the Commission leave to individual operators the decision how to divide the 1000 MHz of spectrum available for their use in a given market. Likewise, it should be a function of an individual applicant's utilization plan precisely what

specific frequency stability characteristics the applicant will

BTA encompasses approximately 14.8 million people and extends all the way to the Arizona border. Under the proposed 90 percent coverage requirement, the Los Angeles licensee would have to be capable of serving a population of 13.3 million within three years. To require that a single licensee serve such a populous area within such a brief frame of time may be fundamentally impractical.

In more sparsely populated regions of the country, such as the west and northwest where one BTA can cover many thousands of square miles, the practical limitations of the LMDS cellular configuration are even more obvious. For example, the Billings, Montana and Reno, Nevada BTAs each cover in excess of 100,000 square miles. Nor are the major concentrations of people necessarily within the primary metropolitan area. In the case of Billings, for instance, the population of the entire county is less than 25 percent of the overall population of the BTA.

In short, under a BTA format and depending upon the service area, either (1) a licensee simply may not be able to underwrite the cost of building out 90 percent of the BTA and thus expose itself to loss of its license, or (2) if the 90 percent

much more realistic schedule would be 25 percent coverage within three years and 50 percent coverage within five years. Second, given the expansiveness of many BTAs, the Commission should provide that regions unserved by an LMDS operator after five years be opened for additional applications.

Although the BTA concept could be workable if modified in these ways, the preferable course in Total TV's view is to model LMDS service areas roughly on the approach utilized in the cellular service. However, in order to eliminate the complexity of licensee-defined service areas, we recommend that service areas be delimited in the familiar terms of MSAs, PMSAs and RSAs. This would satisfy the Commission's concern that all land area within the United States be encompassed. NPRM at Para. 30. In virtually all cases, MSAs and PMSAs are more manageable from an operations vantage than are BTAs, and, at the same time, represent clusters of commercial activity denoted by BTAs.

III. Application Requirements

In the NPRM the Commission proposes a "letter perfect" standard for acceptance of LMDS applications, or, alternatively, the "post-card" method akin to the approach now utilized in IVDS application processing. Total TV urges the Commission to adopt the "letter perfect" standard. This would eliminate the considerable administrative burden existing under current Part 21 rules where only substantial compliance is required for acceptability. On this score, the FCC's experience with the "letter perfect" approach in, for example, the FM radio service,

has confirmed its virtue for processing purposes. By contrast, Total TV believes that the "post-card" format has the potential for significant abuse by application mills, given the FCC's concomitant proposal to permit tentative selectees up to thirty days to submit a complete proposal once their applications are selected for processing.

In this connection, the one-calendar-day filing opportunity proposed in the NPRM may or may not be appropriate depending upon

IV. Demonstration of Financial Qualifications

Total TV endorses the "firm financial commitment" approach proposed in the NPRM. Along with other measures outlined in the NPRM, this will be an additional protection against the abuses available when an applicant is required only to certify reasonable assurance of financing. It is commonly recognized that bank letters purportedly conveying "reasonable assurance", as a practical matter, give the Commission little confidence that

the subject funds are actually available. For this reason, it

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applications. Read literally, the rule would prohibit an entity from holding an interest in LMDS applications in *different* markets. We are aware of no public interest-related concern which the rule in that form might have been intended to address. Indeed, that rendering of the rule is directly at odds with the FCC's discussion at Paragraph 45 of the NPRM. Accordingly, the rule should be clarified to specify that one entity may not hold an interest in more than one applicant "in the same market."

V. Cross-Ownership

Total TV opposes ownership by cable companies in LMDS licensees serving the same market. It is beyond cavil that a principal purpose for the Commission's creation of the LMDS service is to promote competition in the video entertainment marketplace. Although LMDS will have various applications, the principal use of the 28 GHz spectrum in the near term will be video distribution. For this reason, it would be unwise for the Commission to allow cable companies to have an interest in local LMDS facilities. The regulatory oversight required to prevent anti-competitive abuses would not be outweighed by the theoretical prospect that the cable company as an LMDS licensee might implement non-video entertainment, alternative technologies in a non-abusive way. Moreover, permitting cable ownership of LMDS facilities in the same market would be fundamentally at odds with Congress' objectives in the new Cable Act. Nevertheless, in the event the Commission were to permit cable companies to hold interests in LMDS licensees, the cross-ownership rule should be

restricted to cases where the cable company is not the dominant deliverer of video programming in the market in question.

VI. Miscellaneous Recommendations

License Terms. It is our view that the five year license term proposed in the NPRM is too short. Considering the significant capital investment which will be required to build and launch a new LMDS system, we are concerned that lenders will be reluctant to provide financing at adequate levels without an assurance that the initial license term is long enough to enable a new LMDS venture to become a going concern. A license term of ten years, identical to the term accorded other Part 21 licensees, would be more appropriate.

Auctions. Although the Commission has expressed interest in the prospect of obtaining auction authority to implement the LMDS service, we believe auctions would be a mistake. More than any technology to come along in years, LMDS holds the potential for varied and distinct applications which will be, in the end, a function principally of the ingenuity of LMDS licensees. The creative possibilities for uses of this technology are too important to deprive smaller LMDS aspirants the opportunity to bring good ideas to fruition merely because they lack the financial wherewithal to bid competitively for an LMDS license. Whatever other services may be well suited for the auction approach, LMDS is not one of them. We therefore recommend that auction authority not be sought in connection with this service.

VII. Conclusion

Total TV applauds the Commission's efforts to launch the LMDS industry expeditiously. We believe that LMDS holds tremendous promise for bringing rapidly evolving technology to consumers in very short order. Modified to incorporate the changes recommended herein, the new rules will facilitate the development of this industry and should be adopted quickly.

Respectfully submitted,

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